

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

EOLAS TECHNOLOGIES INCORPORATED,

Plaintiff,

v.

Civil Action No. 6:09-cv-00446-LED

ADOBE SYSTEMS INC., AMAZON.COM, INC.
APPLE INC., ARGOSY PUBLISHING, INC.,
BLOCKBUSTER INC., CDW CORP., CITIGROUP
INC., EBAY INC., FRITO-LAY, INC., THE GO
DADDY GROUP, INC., GOOGLE INC., J.C.
PENNEY COMPANY, INC., JPMORGAN CHASE &
CO., NEW FRONTIER MEDIA, INC., OFFICE
DEPOT, INC., PEROT SYSTEMS CORP., PLAYBOY
ENTERPRISES INTERNATIONAL, INC., RENT-A-
CENTER, INC., STAPLES, INC., SUN
MICROSYSTEMS INC., TEXAS INSTRUMENTS
INC., YAHOO! INC., AND YOUTUBE, LLC,

Defendants.

DECLARATION OF JASON W. WOLFF
IN SUPPORT OF DEFENDANTS' MOTION TO TRANSFER

I, Jason W. Wolff, do hereby declare:

1. I am a principal with the law firm of Fish & Richardson P.C., which is counsel of record for Adobe Systems Incorporated in this litigation. It is in that capacity that I have obtained the information and belief expressed in this declaration, which is based on our investigation to date.
2. Plaintiff Eolas Technologies Incorporated ("Eolas") accuses Adobe's Flash Player and Shockwave Player of infringing two U.S. patents: 5,838,906 ("the '906 patent") and 7,599,985 ("the '985 patent"), which claim priority to a patent application filed on October 17, 1994.

3. The two alleged infringing products, Flash Player and Shockwave Player, have their roots in technology acquired by Adobe (a company based in San Jose, California) through a series of corporate transactions. Both alleged infringing products were acquired by Adobe through the purchase of Macromedia, Inc. (“Macromedia”), a software company based in San Francisco, California, in 2005 and both have been continuously improved since their acquisition, predominantly in the Northern District of California at Adobe facilities in San Francisco and San Jose.

Adobe’s Flash Player Technology

4. The precursor to the alleged infringing Adobe Flash Player was first developed around 1993 as the SmartSketch program by FutureWave Software in San Diego, California. The key engineers responsible for developing the program were Jonathan Gay and Robert Tatsumi.

5. By 1995, Messrs. Gay and Tatsumi repurposed SmartSketch for use in creating animations over the World Wide Web; the repurposed program was re-named FutureSplash Animator and could be used with a Web browser, first for use with the Netscape Navigator and followed by a version for use with Microsoft’s Internet Explorer.

6. Around 1996, FutureWave Software was acquired by Macromedia. Messrs. Gay and Tatsumi relocated from San Diego to the Northern District of California at that time and continued to improve the FutureSplash Animator at Macromedia’s offices in San Francisco. Macromedia re-branded the product as “Flash” (a shortening of the name “FutureSplash”). As noted above, Macromedia was acquired by Adobe in 2005 and has continued to develop and offer the Flash Player to the public. Messrs. Gay and Tatsumi have information and are searching for materials relating to the independent development of the Flash Player technology.

Mr. Gay was actively involved in development of the technology until around the year 2000 and Mr. Tatsumi was actively involved in the development of the technology until the year 2002. Mr. Gay left Adobe in 2005 and Mr. Tatsumi left Adobe in 2006.

7. In 1998, Gary Grossman began working on Flash Player development at Macromedia. Mr. Grossman developed the Flash ActionScript language, which is used with for expressing sophisticated dynamic behaviors with Flash technology. Mr. Grossman worked on Flash technology at Adobe until 2006.

8. In 1998, Peter Santangeli, another engineer, joined Macromedia's Flash team, and eventually became vice president for engineering of the technology. Mr. Santangeli was involved in development of the technology through 2002. He left Adobe in 2006.

9. Messrs. Gay, Tatsumi, Grossman, and Santangeli continued to work on the Flash technology and had a significant role in its development until after the issuance of the '906 patent. All are no longer employed by Adobe and are non-parties to this action. All reside within the subpoena power of the United States District Court for the Northern District of California: Mr. Gay resides in Mill Valley, Mr. Tatsumi in San Francisco, Mr. Grossman in San Francisco, and Mr. Santangeli in Los Gatos.

10. Additionally, documents and other information pertaining to FutureSplash, Flash, FutureWave, and Macromedia, the latter two being companies that no longer exist due to the string of acquisitions, are believed to reside with former counsel for the companies in the Northern District of California.

Adobe's Shockwave Player Technology and Early Precursors

11. The precursors to the allegedly infringing Adobe Shockwave Player have their roots in a product called Director, which was released in 1988. Director was used for authoring

animations and it had players, called “Projectors,” which were used for playback of Director files. Development of the Director product predominantly occurred at Macromedia’s headquarters in San Francisco.

12. The original Shockwave Players were developed between 1994 and 1996 in San Francisco as a form of Projector that was specially tailored to display Director animations within a Web browser.

13. The development team for the original Shockwave Player plug-in led by five former Macromedia employees, four of which reside in the within the subpoena power of the Northern District of California: Sarah Allen, Harry Chesley, John Newlin, and Mike Edmunds. A fifth former employee, Ken Day, resides in Seattle, Washington. None are current Adobe employees, though Mr. Newlin is employed by co-defendant Google and Mr. Day is employed by co-defendant Amazon.

14. Around 1994, Mr. Newlin created a prototype of Shockwave Player for Internet browsers; in 1995, Shockwave Players for Netscape Navigator and Internet Explorer was developed, although at least two other players for other applications are believed to have been developed prior to November 1994.

15. David Calaprice, also a former employee, was a lead engineer and product developer for Macromedia from 1992 through early 2005. Mr. Calaprice had a role in the development and management of the Flash Player and Shockwave Player technology alleged by Plaintiff to infringe and has knowledge that is believed to be relevant to this action. Mr. Calaprice left Adobe in 2005, and presently resides in San Francisco, California.

16. Dan Sadowski, also a former employee, was first a consultant and later an engineer on what became Macromedia’s Director product from 1984 through 2009. Mr.

Sadowski is familiar with the history and development of Director, Projectors for Director, of which the alleged infringing technology is one form, and the development history of Shockwave Player. He is no longer employed by Adobe and resides in Colorado Springs, Colorado.

Intermedia; Norman Meyrowitz

17. The article “IRIS Hypermedia Services” (“IRIS”) was published in the Communications of the ACM, Volume 35, Number 1, pp. 36-51, January, 1992. The authors of IRIS are Bernard J. Haan, Paul Kahn, Victor A. Riley, James H. Coombs, and Norman K. Meyrowitz. IRIS describes the Intermedia hypermedia system, which is potential prior art to the patents-in-suit.

18. Mr. Meyrowitz developed Intermedia while employed as Director of Advanced Software Technology at GO Corporation in Foster City, California. Mr. Meyrowitz subsequently joined Macromedia in 1996 as President of Products. Mr. Meyrowitz held several executive positions at Macromedia, including President, Executive Vice President, and Chief Technology Officer, and left the company in 2005.

19. While at Macromedia, Mr. Meyrowitz participated in the acquisition, design and development of the Flash Player and Shockwave Player technologies, and other related technologies such as the Macromedia Open Architecture and XTRAs plug-ins. As a key executive at Macromedia, Mr. Meyrowitz played a role in the acquisition of FutureWave too.

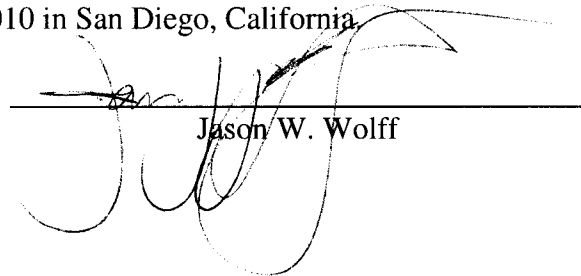
20. Mr. Meyrowitz continued his involvement with the Flash Player and Shockwave Player technologies until after the issuance of the '906 patent. Mr. Meyrowitz resides in San Francisco, California. Mr. Meyrowitz, given the long development and evolution of Flash Player and Shockwave Player, his involvement in developing potential prior art systems, and his knowledge of the subject matter of this case generally, may be critical to Adobe's defense in this

case, including for fundamental defenses such as the possible prior art status of the alleged infringing Flash Player and Shockwave Player technologies, the possible prior art status of previous hypermedia systems developed by Mr. Meyrowitz, and damages related topics.

Current Employees

21. The following current Adobe employees were or are involved with the development or management of the accused technology: Chris Nuuja (employed from 1995 to present), Doug Benson (employed from 1995 to present), Lee Thomason (employed from 2000 to present), and Lalit Balchandani (employed from 2003 to present). All work in Adobe's facilities in the Northern District of California. While Messrs. Nuuja and Benson have been with the company since 1995, both worked on the alleged infringing Flash or Shockwave players after the initial development by others.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief. Executed on January 27, 2010 in San Diego, California.



Jason W. Wolff